

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

HERCULES TECHNOLOGY GROWTH
CAPITAL, INC.,

Plaintiff,

v.

CORINDUS, INC.,

Defendant.

COMPLAINT

Plaintiff, Hercules Technology Growth Capital, Inc. (“Hercules”), by and through its attorneys, Burns & Levinson, LLP, and complaining of the Defendant, Corindus, Inc. (“Defendant”), alleges as follows:

INTRODUCTION

1. This is an action for breach of contract and breach of the implied covenant of good faith and fair dealing.
2. On May 7, 2014, Hercules, as potential Lender, and Defendant, as potential Borrower, entered into a term sheet for a proposed growth capital financing loan (the “Loan” and the “Term Sheet”). The Term Sheet is attached hereto as Exhibit A.
3. Pursuant to the Term Sheet, Defendant agreed to reimburse Hercules for all out-of-pocket expenses Hercules incurred in connection with its diligence efforts related to the Loan.
4. Further, the Term Sheet provided that if Defendant for any reason, failed to close the Loan, Hercules would be entitled to a “Breakup Charge” in the amount of one hundred thousand dollars (\$100,000), plus expenses incurred (the “Breakup Charge”).

5. Defendant failed to close the Loan and failed to pay Hercules the Breakup Charge.

PARTIES

6. Hercules is a corporation formed and existing under the laws of the State of Maryland, with a principal place of business at 400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301. Hercules provides financing to entrepreneurial companies at all stages of development.

7. Upon information and belief, Cornidus, Inc. is a Delaware corporation with a principal place of business at 309 Waverly Oaks Road, Suite 105, Waltham, Massachusetts 02452.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Hercules's claims pursuant to 28 U.S.C. § 1332. Specifically, there is complete diversity between the parties and Hercules's claim exceeds the jurisdictional monetary requirement.

9. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant maintains its principal place of business in Massachusetts. *See* Fed. R. Civ. P. 4(k); Mass. Gen. Laws c. 223A, § 2.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1), as Defendant resides within Massachusetts.

STATEMENT OF FACTS

Background

11. On May 7, 2014, Hercules and Defendant entered into a Term Sheet for a potential Loan by Hercules to Defendant of ten million dollars (\$10,000,000.00) (the "Total Commitment").

12. Pursuant to the Term Sheet, the parties agreed that Defendant would pay all out-of-pocket expenses incurred by Hercules in connection with its diligence efforts. Defendant also agreed to pay Hercules a Breakup Charge in the event that the Loan did not close. Specifically, the Term Sheet provides, in the pertinent parts, as follows:

Borrower shall pay the invoiced and documented out of pocket expenses, including record searches, filing costs, other miscellaneous expenses, and reasonable and documented fees of counsel to the Lender necessary to negotiate and document the Loan and shall pay such expenses irrespective of whether Borrower determines to close the loan.

In consideration of the time, cost and expense devoted, and to be devoted, by the Lender in connection with the transactions contemplated by this proposal, Borrower agrees that in the event Borrower, for any reason, determines not to close the proposed transaction under terms as substantially contemplated herein, Borrower shall pay Lender all its Expenses and the Loan Facility Charge ("Breakup Charge").

13. The Loan Facility Charge is defined by the Term Sheet as one percent (1.0%) of Total Commitment Amount due at Loan Closing. Further, Hercules incurred out-of-pocket expenses totaling eleven thousand five hundred and sixty-four dollars (\$11,564.00). Thus, the Breakup Charge is one hundred eleven thousand five hundred and sixty-four dollars (\$111,564.00).

Defendant's Breach of the Term Sheet

14. Despite repeated requests from Hercules to close the Loan, Defendant refused to do so or to meaningfully respond to Hercules regarding the loan.

15. As a result of Defendant's failure to close the loan, Defendant is liable to Hercules for, among other damages, the Breakup Charge.

16. On or about June 16, 2014, Hercules duly demanded payment of the Breakup Charge in full.

17. Despite Hercules' demands, Defendant has refused to pay *any* portion of the monies due and owing to Hercules under the Term Sheet, choosing instead to disregard Hercules' rights thereunder.

CAUSES OF ACTION

COUNT I **(Breach of Contract)**

18. Hercules repeats and realleges each and every allegation set forth in the prior paragraphs of the Complaint as though set forth at length herein.

19. The Term Sheet is a valid, enforceable and binding contract.

20. Hercules fulfilled all of its obligations under the Term Sheet.

21. Defendant breached its obligations under the Term Sheet by, *inter alia*, its conduct described above.

22. As a result of Defendant's breach of the Term Sheet, Hercules has been injured and suffered substantial damages.

COUNT II **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

23. Hercules repeats and realleges each and every allegation set forth in the prior paragraphs of the Complaint as though set forth at length herein.

24. The Term Sheet carried with it an implied covenant of good faith and fair dealing.

25. Defendant breached the implied covenant of good faith and fair dealing in the Term Sheet by, *inter alia*, its conduct described above.

26. As a result of Defendant's breach of the implied covenant of good faith and fair dealing, Hercules has been injured and suffered substantial damages.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, Hercules Technology Growth Capital, Inc., respectfully requests that this Honorable Court:

- A. Enter a judgment in favor of Hercules Technology Growth Capital, Inc. on all counts of this Complaint;
- B. Award Hercules Technology Growth Capital, Inc. all damages it proves to have suffered as a result of Defendant's conduct, together with prejudgment interest;
- C. Award Hercules Technology Growth Capital, Inc. all costs, expenses, and attorneys' fees it incurs in prosecuting this matter; and
- D. Award Hercules Technology Growth Capital, Inc. all other and further relief as justice so requires.

Dated: August 22, 2014

Respectfully submitted,

HERCULES TECHNOLOGY GROWTH
CAPITAL, INC.

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